Chong Wai Automobile Enterprise (M) Sdn Bhd v Saga Autoparts Industries Sdn Bhd (Long Kwok Seng & Ors, third parties)

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO 22NCVC-483 OF 2011
VT SINGHAM J
28 SEPTEMBER 2012

Contract — Sale and purchase of property — Sale and purchase agreement — Former directors who signed sale and purchase agreement removed — Application for declaration that SPA null and void — Demand of return of deposit paid earlier — Losses suffered due to repudiation — Whether terms of contract breached when sum demanded not paid — Whether sale and purchase agreement void ab initio — Whether there was binding contract

The plaintiff had entered into a sale and purchase agreement ('SPA') with the defendant to buy a commercial property. However, in the midst of preparing to proceed with the sale and purchase transaction, the defendant's solicitors sent a letter to the plaintiffs solicitors notifying that the defendant's former directors who signed the said SPA were removed from the defendant; the sale transaction and the said SPA signed by the former directors did not have any binding effect between the plaintiff and the defendant; Messrs LY Chee & Associates did not have any authority as the stakeholder to hold any money; the defendant would apply in court for a declaration that the said SPA was null and void; the defendant requested the plaintiff to return the original Form 14A and other related documents. The plaintiffs informed the defendant that the defendant's repudiation was accepted and the said SPA was assumed void. The plaintiff then demanded the defendant to return the deposit of RM145,000 paid earlier to the defendant. It was claimed that the plaintiff had suffered losses due to the defendant's repudiation and the defendant had breached the terms of the contract when they refused to pay the sum demanded. The plaintiffs claimed for a declaration that the defendant had breached the SPA and the plaintiff had naturally accepted the repudiation and the said SPA was presumed to be null and void after 14 days or any other date and in the alternative, a declaration that the said SPA be terminated as a result of the breach by the defendant; the defendant to pay the plaintiff RM145,000 being the agreed damages. In the present suit, the defendant included and claimed against the former directors of the defendant as the third parties. The issues that arose before the court were whether the defendant was entitled to a declaration that the SPA was void ab initio and/or could not be enforced due to the removal of the directors; whether there was a binding contract between the plaintiff and the defendant for the sale of defendant's property before the alleged removal of the first third, second

and third defendant as directors; whether the defendant could unilaterally repudiate the SPA or whether the repudiation was a breach of contract; whether the consequent resolution of the EGM of shareholders was applicable and effective when Wong Lok Kong, Siew Chee Weng and Messrs Dennis Nik & Wong took measures to repudiate the SPA; whether the removal of the first, second and third third party as the directors rescinded the SPA; whether there was any dispute affecting internal management; whether the plaintiff was entitled to claim liquidated damages if there was a breach by the defendant; whether the defendant was entitled to claim contribution or indemnity from the third parties.

Held, allowing the plaintiff's claim and dismissing the defendant's third party claim with costs:

(1) The resolution removing the directors did not expressly or by necessary implications, provided or mandated for the cancellation, repudiation or non-recognition of the said SPA dated or had extinguished the resolution to sell the said property to the plaintiff which had existed prior to the removal of the directors namely, the signatories to the said SPA. The said SPA and the sale of the said property continued to be in force and was valid until such time there was a proper and valid resolution passed by the defendant-company to cancel the said SPA or to treat the said SPA as non-existing or was not recognised or to revoke the resolution. Accordingly, upon the undisputed evidence and based on the contemporaneous documents, the plaintiff had discharged their burden and even if the two directors were removed as directors at the time of the execution the said SPA, it was still binding upon the defendant (see para 21).

(2) The defendant could not be allowed to escape liability by asserting that since the first and third third party had been removed as directors at the time when the said SPA was executed, the said SPA pursuant to the resolution was void ab initio. Without having produced any resolution to the effect that the purchasers right to purchase, the said property pursuant to the resolution had been revoked by a subsequent resolution. There was no such resolution and therefore the said sale to the plaintiff pursuant to the resolution passed by the defendant still existed in law (see para 24).

(3) There was sufficient evidence for which an inference of ratification by acquiescence could be drawn as the defendant had not taken adequate steps to inform the plaintiff of the non-recognition of the said SPA within a reasonable time or at the earliest period possible or available or a resolution having been passed to cancel the said SPA or the sale to the plaintiff (see para 26).

(4) The plaintiff was a bona fide purchaser for value without notice or

constructive of the internal squabbles among the directors and it did not affect the resolution to sell the said property to the said plaintiff and which had authorised the first and third third party to execute the SPA which resolution remained intact and not revoked but for the purported removal of first and third third party as directors of the defendant-company (see para 28).

(5) In addition to the refund of the deposit sum of RM145,000 which had in fact been refunded and accepted by the plaintiff's solicitors, cl 8 of the said SPA could not be invoked in the plaintiff's favour. However, the plaintiff might be entitled to damages for which the damages must be proven. The losses that the plaintiff suffered seemed to be the fees paid to the solicitors for the sale and purchase transaction, the payment for stamp duty and charges to Messrs Wang Lai Realty as agency fees. In any event, the plaintiff was entitled to damages and the same was subject to proof and to be assessed by the Registrar of the High Court unless it was agreed between the parties (see para 35).

[Bahasa Malaysia summary

Plaintif telah memeterai satu perjanjian jual dan beli ('PJB') dengan defendan untuk membeli satu hartanah komersial. Walau bagaimanapun, ketika sedang bersedia untuk meneruskan dengan transaksi jual dan beli, peguamcara defendan telah menghantar sepucuk surat kepada peguamcara plaintif memaklumkan bahawa pengarah-pengarah terdahulu defendan yang menandatangani PJB tersebut telah disingkirkan daripada defendan; transaksi jualan dan PJB yang ditandatangani oleh pengarah-pengarah terdahulu tidak mempunyai sebarang kesan mengikat di antara plaintif dan defendan; Tetuan LY Chee & Associates tidak mempunyai sebarang kuasa sebagai pemegang amanah untuk memegang apa-apa wang; defendan akan memohon di mahkamah untuk satu deklarasi bahawa PJB tersebut adalah tidak sah dan batal; defendan meminta plaintif untuk memulangkan Borang 14A yang asal dan dokumen-dokumen lain yang berkenaan. Plaintif-plaintif memaklumkan defendan bahawa penolakan defendan diterima dan PJB tersebut dianggap sebagai tak sah. Plaintif kemudiannya meminta defendan untuk memulangkan deposit RM145,000 yang dibayar sebelumnya kepada defendan. Addah didakwa bahawa plaintif telah mengalami kerugian berikutan penolakan defendan dan defendan telah melanggar terma-terma kontrak apabila mereka enggan untuk membayar jumlah yang diminta. Plaintif-plaintif menuntut untuk satu deklarasi bahawa defendan telah melanggar PJB dan plaintif secara asalnya menerima penolakan dan PJB tersebut dianggap sebagai tidak sah dan batal selepas 14 hari atau mana-mana tarikh dan secara alternatif, satu deklarasi bahawa PJB tersebut ditamatkan akibat daripada pelanggaran oleh defendan; defendan perlu membayar plaintif RM145,000 sebagai ganti rugi yang dipersetujui. Dalam guaman ini, defendan terlibat dan menuntut terhadap pengarah-pengarah terdahulu defendan sebagai pihak ketiga. Isu-isu yang

berbangkit di hadapan mahkamah ialah sama ada defendan berhak untuk satu deklarasi bahawa PJB dianggap *void ab initio* dan/atau tidak boleh dikuatkuasakan disebabkan penyingkiran pengarah-pengarah; sama ada terdapat kontrak yang mengikat di antara plaintif dan defendan untuk jualan hartanah defendan sebelum penyingkiran defendan pertama, kedua dan ketiga sebagai pengarah-pengarah yang didakwa; sama ada defendan secara unilateral menolak PJB atau sama ada penolakan tersebut merupakan pelanggaran kontrak; sama ada resolusi berbangkit daripada MAL pemegang-pemegang saham terpakai dan berkuat kuasa apabila Wong Lok Kong, Siew Chee Weng dan Tetuan Dennis Nik & Wong mengambil langkah-langkah untuk menolak PJB; sama ada penyingkiran pihak pertama, kedua dan ketiga sebagai pengarah-pengarah membatalkan PJB; sama ada terdapat sebarang pertikaian menjejaskan pengurusan dalaman; sama ada plaintif berhak untuk menuntut ganti rugi jumlah tertentu sekiranya terdapat pelanggaran oleh defendan; sama ada defendan berhak untuk menuntut sumbangan atau tanggung rugi daripada pihak ketiga.

Diputuskan, membenarkan tuntutan plaintif dan menolak tuntutan pihak ketiga defendan dengan kos:

(1) Resolusi menyingkirkan pengarah-pengarah tidak secara nyata atau melalui implikasi sepatutnya, memperuntukkan atau memandatkan untuk pembatalan, penolakan atau tidak mengiktiraf PJB bertarikh tersebut atau telah membatalkan resolusi untuk menjual hartanah kepada plaintif yang wujud sebelum penyingkiran pengarah-pengarah iaitu penandatangan-penandatangan kepada PJB tersebut. PJB tersebut dan jualan hartanah tersebut masih terus berkuat kuasa dan sah sehingga ketika di mana terdapat resolusi yang sepatutnya dan sah dipersetujui oleh syarikat-defendan untuk membatalkan PJB tersebut atau untuk menganggap PJB sebagai tidak wujud atau tidak diiktiraf atau untuk membatalkan resolusi. Dengan ini, menurut keterangan tidak dicabar dan berdasarkan dokumen-dokumen semasa, plaintif-plaintif telah melepaskan beban mereka dan malah sekiranya dua pengarah disingkirkan sebagai pengarah pada masa PJB dimeterai, ia masih mengikat defendan (lihat perenggan 21).

(2) Defendan tidak dibenarkan untuk melepaskan diri daripada liabiliti dengan mendakwa bahawa memandangkan pihak pertama dan ketiga telah disingkirkan sebagai pengarah-pengarah pada masa PJB tersebut dimeterai, maka PJB tersebut menurut resolusi dianggap *void ab initio*. Tanpa mengemukakan apa-apa resolusi yang memberi kesan bahawa hak pembeli-pembeli untuk membeli, hartanah tersebut menurut resolusi telah dibatalkan oleh resolusi berikutnya. Tidak terdapat resolusi tersebut dan oleh itu jualan tersebut menurut resolusi yang diluluskan oleh defendan masih lagi wujud mengikut undang-undang (lihat perenggan 24).

(3) Terdapat keterangan mencukupi di mana satu kesimpulan ratifikasi melalui persetujuan dapat dibuat memandangkan defendan tidak mengambil langkah-langkah mencukupi untuk memaklumkan plaintif mengenai ketidakiktirafan PJB tersebut dalam masa yang munasabah atau pada tempoh seawal mungkin atau terdapat satu resolusi diluluskan untuk membatalkan PJB tersebut atau jualan kepada plaintif (lihat perenggan 26).

(4) Plaintif merupakan pembeli bona fide untuk nilai tanpa notis atau menimbulkan pertikaian dalaman di antara pengarah-pengarah dan tidak menjejaskan resolusi untuk menjual hartanah tersebut kepada plaintif dan telah membenarkan pihak pertama dan kedua untuk memeterai PJB yang kekal utuh dan tidak dibatalkan tetapi bertujuan menyingkirkan pihak pertama dan ketiga sebagai pengarah syarikat defendan (lihat perenggan 28).

(5) Sebagai tambahan kepada pemulangan semula deposit berjumlah RM145,000 yang sebenarnya telah dipulangkan dan diterima oleh peguamcara plaintif, klausa 8 PJB tidak boleh digunakan memihak kepada plaintif. Walau bagaimanapun, plaintif mungkin berhak untuk ganti rugi di mana ganti rugi tersebut perlu dibuktikan. Kerugian yang dialami plaintif merupakan bayaran-bayran yang perlu dibayar kepada peguam cara untuk transaksi jual dan beli; bayaran untuk duti setem dan caj kepada Tetuan Wang Lai Realty sebagai bayaran agensi. Dalam mana-mana keadaan, plaintif berhak untuk ganti rugi dan ganti rugi tersebut tertakluk kepada bukti dan juga perlu dinilai oleh Pendaftar Mahkamah Tinggi melainkan ianya dipersetujui di antara pihak-pihak (lihat perenggan 35).]

Notes

For cases on sale and purchase agreement, see 3(2) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 5906–5911.

Cases referred to

Ayer Hitam Tin Dredging Malaysia Bhd v YC Chin Enterprises Sdn Bhd [1994] 2 MLJ 754, SC (refd)

Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd [1995] 3 MLJ 331; [1995] 4 CLJ 283, FC (refd)

Byrd v Nunn (1877) 7 Ch D 284, CA (refd)

Chan Thiam Teng v Ban Swee Heng Sdn Bhd [1992] 2 MLJ 583, HC (refd)

Chemfert Sdn Bhd & Anor v Lim Hua [2010] 5 MLJ 228, CA (refd)

Daiman Development Sdn Bhd v Mathew Lui Chin Teck & anor appeal [1981] 1 MLJ 56, PC (refd)

Datuk Johari Abdul Ghani & Ors v QSR Brands Bhd & Ors [2007] 4 MLJ 19, CA (refd)

A *Datuk Yap Pak Leong v Sababumi (Sandakan) Sdn Bhd* [1997] 1 MLJ 587, CA (refd)

Extreme System Sdn Bhd v Ho Hup Construction Company Bhd & Ors [2010] MLJU 487, HC (refd)

Ferguson v Wilson (1866) LR 2 Ch App 77, CA (refd)

B *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin & Ors* [1998] 1 SLR 374, CA (refd)

Goh Hooi Yin v Lim Teong Ghee & Ors [1990] 3 MLJ 23, HC (refd)

Grant v United Kingdom Swithback Railways Co (1888) 40 Ch D 135, CA (refd)

C *Hely-Hutchinson v Brayhead Ltd* [1967] 3 All ER 98, CA (refd)

Hubah Sdn Bhd and Ors v Koperasi Pusaka (Penampang) Berhad and Ors [2011] MLJU 230, HC (refd)

Ireland v Livingstone (1872) LR 5 HL 395 (refd)

D *Johor Coastal Development Sdn Bhd v Constrajaya Sdn Bhd* [2009] 4 MLJ 443; [2009] 4 CLJ 569, FC (refd)

Kaye v Croydon Tramways Company [1898] 1 Ch 358, CA (refd)

Kelapa Sawit (Teluk Anson) Sdn Bhd v Dr Yeoh Kim Leng & Ors [1991] 1 MLJ 301; [1991] 1 CLJ (Rep) 194, SC (refd)

E *Kong Thai Sawmill (Miri) Sdn Bhd; Re & Ors v Ling Beng Sung* [1978] 2 MLJ 227, PC (refd)

Lim Chia Min v Cheah Sang Ngeow & Anor [1997] 1 MLJ 127, FC (refd)

Malaysia Newsprint Sdn Bhd v Perdana Cigna Insurance Bhd & Ors [2008] 2 MLJ 256, CA (refd)

F *Parker & Cooper, Limited v Reading* (1926) 1 Ch 975, Ch D (refd)

Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors [1998] 1 MLJ 465, FC (refd)

Rex v Yoon Choon Pawnshop and others [1939] 1 MLJ 125 (refd)

G *Sakapp Commodities (M) Sdn Bhd v Cecil Abraham (Executor of the estate of Loo Cheng Ghoe* [1998] 4 MLJ 651; [1998] 4 CLJ 812, CA (refd)

Selva Kumar a/l Murugiah v Thiagarajah a/l Retnasamy [1995] 1 MLJ 817; [1995] 2 CLJ 374, FC (refd)

H *Tan Chong & Sons Motor Company Sdn Bhd v Alan McKnight* [1983] 1 MLJ 220, FC (refd)

Tan Kian Hua v Colour Image Scan Sdn Bhd & Other [2004] MLJU 178, HC (refd)

Tan Swee Hoe Co Ltd v Ali Hussain Bros [1980] 2 MLJ 16, FC (refd)

I *Teh Eok Kee & Anor v Tan Chiah Hock & Anor* [1996] 3 MLJ 316; [1996] 2 CLJ 227, SC (refd)

Teo Kim Kuat v Aetna Universal Insurance Bhd (No2) [2002] 2 MLJ 333; [2002] 2 CLJ 147, HC (refd)

Thong Foo Ching & Ors v Shinegori [1988] 4 MLJ 585, CA (refd)

Legislation referred to

Companies Act 1965 ss 20, 127, 145, 181, 181(1), 355(1), Forms 14A, 49
Contracts Act 1950 s 66
Evidence Act 1950 s 114(g)

Yusrin Faidz Yusoff (Faidz Leong & Chong) for the plaintiff.
Victor Teoh Wei Loong (Rajvinder Singh with him) (Dennis Nik & Wong) for the defendant.
Ravin Woodhull (LJ Fong, P Arudkumaran and Tan Kim Soon with him) (Tan Kim Soon & Co) for the third parties.

VT Singham J:

[1] By the statement of claim dated 8 June 2011 (encl 2), the plaintiff had pleaded, inter alia, and briefly is as follows:

(a) the plaintiff had entered into a sale and purchase agreement dated 7 September 2010 ('the said sale and purchase agreement') with the defendant whereby the plaintiff had agreed to buy and the defendant had agreed to sell a commercial property known as four and half storey intermediate terrace shop office held under Lot No 34802, GRN 8456 Mukim Batu, District of Kuala Lumpur, State of Wilayah Persekutuan (KL) measuring approximately 149.012 square metres ('the property') with the purchase price of RM1,450,000;

(b) the plaintiff had performed its obligations pursuant to the said sale and purchase agreement and prepared to continue with the sale and purchase transaction;

(c) however, the defendant's solicitors, Messrs Dennis Nik and Wong had sent a letter dated 2 December 2010, to the plaintiff's solicitors which states as follows:

(i) the former directors of the defendant who signed the said sale and purchase agreement were removed as the directors of the defendant on 30 July 2010;

(ii) the sale transaction and the said sale and purchase agreement which were signed by the former directors of the defendant does not have any binding effect between the plaintiff and the defendant;

(iii) Messrs LY Chee & Associates does not have any authority as the stakeholder to hold any money as provided under the said sale and purchase agreement;

(iv) the defendant indicated their intention to file an application in court for a declaration that the said sale and purchase agreement is null and void; and

(v) the defendant requested the plaintiff to return the original Form 14A and any other related documents;

(d) by the letter dated 1 February 2011, the plaintiff's solicitors informed the defendant's solicitors that the plaintiff had accepted the defendant's repudiation and assumed that the said sale and purchase agreement as void;

(e) the defendant then wishes to resell the said property. Pursuant to the notice of withdrawal of the private caveat dated 20 May 2012, the defendant's solicitors informed the plaintiff to withdraw the private caveat vide Presentation No 19606/2010 which was lodged by the plaintiff against the said property on 27 October 2010. The plaintiff then removed the said private caveat on 24 May 2011;

(f) consequently, the plaintiff through its solicitors demanded the defendant to return the deposit of RM145,000 which was paid to the defendant. The plaintiff had also suffered losses as a result of the repudiation of the said sale and purchase agreement;

(g) however, the defendant had breach the terms of the contract when they refused to pay the plaintiff all the sum demanded; and

(h) hence, the plaintiff's claim for the following reliefs:

(i) a declaration that the defendant had breached the sale and purchase agreement dated 7 September 2010 and the plaintiff had naturally accepted the repudiation on 1 February 2011 and the said sale and purchase agreement is presumed to be null and void after 14 days or any other date which this court thinks proper and in the alternative, a declaration that the said sale and purchase agreement be terminated as a result of the breach by the defendant;

(ii) the defendant to pay the plaintiff being RM145,000 being the agreed damages;

(iii) in the alternative, the defendant to pay the plaintiff the specific damages and/or damages for breach of the contract;

(iv) interest at the rate of 8% from the date of the service of the writ of summons until the date of the judgment;

(v) interest on the judgment sum at the rate of 8%pa from the date of the judgment until full satisfaction;

(vi) costs; and

(vii) any other reliefs that this court thinks fit.

[2] On the other hand, by the amended statement of defence and counterclaim dated 22 October 2010 (encl 17), the defendant had denied the

plaintiff's claim and contended, inter alia, and briefly as follows:

(a) the sale and purchase agreement dated 7 September 2010 was signed by the former directors of the defendant, Long Kwok Seng and Long Kok Heng. However, the said Long Kwok Seng and Long Kok Heng were removed as the directors of the defendant during the extraordinary general meeting ('EGM') on 30 July 2010. Hence, no authority was given to the said Long Kwok Seng and Long Kok Heng to sign any agreements including the said sale and purchase agreement and the memorandum of transfer (Form 14A) under the defendant company's common seal;

(b) therefore, the said sale and purchase agreement is void ab initio and/or invalid and/or unenforceable and the defendant is not bound by the said sale and purchase agreement. The plaintiff's claim is also premature and misconceived in law and/or in fact;

(c) Messrs LY Chee & Associates have no authority to be the stakeholder to hold any money as provided under the said sale and purchase agreement;

(d) by the letter dated 11 February 2012, the defendant's solicitors informed the plaintiff's solicitors as follows:

(i) contrary to the plaintiff's allegation, the defendant has not repudiated the sale and purchase agreement since it is void ab initio;

(ii) the said sale and purchase agreement is null and void for want of authority on the part of the 'persons' who signed the said sale and purchase agreement as they were not the directors of the defendant at that material time;

(iii) the defendant has no knowledge nor received any deposit which was paid by the plaintiff; and

(iv) by letter dated 30 May 2011, the defendant's solicitors informed the plaintiff's solicitors that the defendant had not repudiated the said sale and purchase agreement, the plaintiff's claim of RM145,000 for the agreed liquidated damages is misconceived in law and/ or in fact;

(e) therefore, the defendant has counterclaimed for:

(a) a declaration that the sale and purchase agreement dated 7 September 2010 is void ab initio and/or invalid and/or unenforceable;

(b) general damages to be assessed by this honourable court;

(c) interest of 4%pa on the damages decreed by the honourable court from the date of the counterclaim until full realisation;

(d) costs of this action; and

A (e) further and/or other relief which this honourable court deems fit.

[3] By the reply to the statement of defence and defence to the counterclaim dated 28 September 2011 (encl 18), the plaintiff has denied the defendant's contention and further plead, inter alia, and briefly is as follows:

B (a) the plaintiff had carried out a company search at the Companies Commission of Malaysia and relied on the documents, representations and admissions by the said directors of the defendant. At all material time, the plaintiff was not informed on the removal of the said directors;

C (b) the issue on the capacity of the directors of the defendant to sign the said sale and purchase agreement is an internal affairs of the defendant company and cannot be used as an excuse to escape from their liability pursuant to the said sale and purchase agreement;

D (c) the said sale and purchase agreement entered into between the plaintiff and the defendant is binding upon the plaintiff and the defendant;

(d) the defendant had breached the said sale and purchase agreement and therefore should be liable to pay the plaintiff the damages as agreed;

E (e) the said sale and purchase agreement is not void ab initio and/or invalid and/or unenforceable; and

(f) the plaintiff pray for the defendant's defence and counterclaim to be dismissed.

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[4] In addition to that, the defendant had filed an ex parte application dated 19 September 2011 (encl 14), for leave to include the former directors of the defendant, ie En Long Kwok Seng, En Long Kok Wah and En Long Kok Heng who had signed the said sale and purchase agreement as the third party in this G suit. On 27 September 2011, this court had allowed the said leave application. The defendant then filed an application to serve the statement of claim on the third party by summons for directions for third parties dated 19 October 2011 (encl 24). On 14 December 2011, this court had allowed the defendant's application (encl 24).

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[5] By the statement of claim against the third party dated 28 December 2011 (encl 40), the defendant had pleaded, inter alia, and briefly is as follows:

(a) the defendant denies the plaintiff's claim and claims for contribution or I indemnity from the third parties insofar as to any damages and interest and costs that the defendants is ordered to pay to the plaintiff in this action (if allowed by the court);

(b) on 30 July 2010 the third parties were removed as the directors of the defendant during the extra ordinary general meeting. Despite being

removed on 30 July 2010, the third party have had executed the said sale and purchase agreement under the defendant's common seal on 7 September 2010 with the plaintiff to purchase the said property for the said purchase price;

(c) the defendant's claim against the third parties is due to the act of the third party that had executed the said sale and purchase agreement and the memorandum of transfer (Form 14A) under the defendant's common seal despite having the knowledge that they have been removed as the directors of the defendant on 30 July 2009 and do not have capacity and/or any authority to do so and had caused the plaintiff to file this suit against the defendant, inter alia, for the sum of RM145,000 as the agreed liquidated damages together with the interest and costs; and

(d) therefore, the defendant claims against the third parties for:

(a) agreed liquidated damages in the sum of RM145,000.00;

(b) contribution or indemnity from the third party insofar as to any damages together with interest and costs that the defendant has to pay to the plaintiff in this action;

(c) further and/or alternative, damages to be assessed;

(d) interest at the rate of 4%pa on the total damages which is allowed by the court from the date of the filing of this statement of claim until full realisation;

(e) costs for the third party proceedings; and

(f) any other and further relief which this honourable court thinks fit and just.

[6] By the statement of defence of the third party dated 10 January 2012 (encl 42), the third party had denied the defendant's claim and contended, inter alia, and briefly as follows:

(a) a resolution to disposed of the said property at a value of RM1,150,000 or not less than RM920,000 was passed during the extra ordinary general meeting dated 26 May 2010 based on the valuation report by the First Pacific Valuers Property Consultants Sdn Bhd which had been appointed by the defendant;

(b) the reasons for the disposal of the said property are as follows:

(i) the said property had been rented out to third parties for some time whereby the total monthly collected was insufficient to service the banking facilities;

(ii) the said property was also not suitable for use by the defendant due to its location; and

(iii) the proceeds from the sale of the said property shall be utilised to settle all banking facilities and other liabilities of the defendant;

(c) the third party ancillary averments are as follows:

(i) by the defendant's directors' circular resolution dated 17 May 2010, the first (first party) was appointed as chairman of the board of directors for the defendant;

(ii) by the defendant's directors' circular resolution dated 14 July 2010, the third party was given the authority by the defendant to execute all documents for the disposal of the said property;

(iii) pursuant to the defendant's directors' circular resolution dated 1 July 2010, Messrs Wang Lai Realty (Kepong) was appointed to assist and act as agents in securing a buyer for the said property for a 1.5% fee of the final disposal price; and

(iv) pursuant to the defendant's directors' resolution dated 14 July 2010, the said property was to be disposed off to Chang Wai Automobile Enterprise (M) Sdn Bhd for a cash consideration of RM1,450,000 and that Messrs LY Chee & Associates be appointed as solicitors to act for the defendant of the said property disposal;

(d) prior to the execution of the said sale and purchase agreement on 7 September 2010, the defendant had validly in law authorised the first and third parties to execute all documents for the sale of the said property for the sum of RM1,450,000;

(e) prior to the execution of the said sale and purchase agreement on 7 September 2010, the defendant had validly in law appointed Messrs LY Chee & Associates to act as solicitors for the disposal of the said property;

(f) following the plaintiff's offer on 14 July 2010 and the defendant's acceptance on 20 July 2010 based on several terms of the sale and purchase of the said property, the defendant had accepted the plaintiff's deposit on 26 July 2010 via cheque dated 23 July 2010 which had resulted in a binding contract between the defendant and the plaintiff in respect of the sale and purchase of the said property;

(g) the third parties had no knowledge of any transactions, dealings and actions between the plaintiff and the defendant through its servant(s) and/or agent(s), in particular Wong Lok Kong, Siew Chee Weng and Messrs Dennis Nik & Wong on or after 2 December 2010 and are not responsible for the defendant's own actions and/or conduct;

(h) the defendant had approbated and reprobate in law and fact when stating that there is no repudiation by the defendant on the sale of the said property;

(i) the defendant's claim against the third parties is an afterthought and intended to escape liability caused by its own neglect, fault and conduct through its servant(s) and/or agent(s);

(j) the defendant is estopped and barred from seeking any indemnity from the third parties;

(k) the defendant's claim against the third parties is invalid, mala fide, misconceived and is without any basis in law and in fact; and

(l) the third parties pray that the defendant's claim against the third parties be dismissed with costs.

[7] By the reply to the third party defence dated 20 January 2012 the defendant had pleaded, inter alia, and briefly as follows:

(a) the deposit was accepted by the defendant on 26 July 2010 pending finalisation of the terms and a formal SPA to be executed between the plaintiff and the defendant;

(b) the third party have failed to attend the said EGM and have had never challenged the said EGM; and

(c) the defendant prays that the defendant's claim against the third parties be allowed with costs.

[8] The statement of agreed facts (encl E), is as follows:

(1) Plaintif adalah setiap masa yang material tindakan ini, merupakan sebuah syarikat yang ditubuhkan di bawah Akta Syarikat 1965 dan mempunyai alamat perniagaannya di No. 65, Jalan SU 40, Taman Selayang Utama, Batu Caves, 68100 Selangor Darul Ehsan.

(2) Defendan ialah pada masa yang material tindakan ini, merupakan sebuah syarikat yang ditubuhkan di bawah Akta Syarikat 1965 dan mempunyai alamat perniagaannya di No. 24, Persiaran Segambut Tengah, 51200 Kuala Lumpur.

(3) Defendan telah melalui surat Tetuan Dennis Nik 85 Wong bertarikh 2.12.2010 melakukan perkara-perkara berikut:-

(a) Memaklumkan bahawa Pengarah-Pengarah defendan yang menandatangani Perjanjian Jual Beli tersebut sebenarnya telah disingkirkan pada 30.7.2010;

(b) Menyatakan bahawa transaksi dan perjanjian yang ditanda tangani tidak mempunyai kesan mengikat;

(c) Menyatakan bahawa Tetuan LY Chee & Associate tidak mempunyai autoriti untuk memegang wang deposit atau apa-apa wang berkenaan transaksi tersebut;

A (d) Menyatakan niat untuk memohon tindakan Mahkamah untuk menganggap Perjanjian Jual Beli tersebut sebagai 'null and void';

(e) Menyatakan hasrat untuk ingin memohon pemulangan Borang 14A yang asal dan apa-apa dokumen yang terlibat.

B (4) Plaintif telah menarik balik kaveat persendirian no perserahan 19609/2010 pada 24.5.2011 setelah diberikan notis bertarikh 20.5.2011 untuk berbuat demikian oleh Tetuan Dennis Nik & Wong.

[9] The issues to be tried (encl G) between the plaintiff and the defendant is C as follows:

(1) Sama ada defendan berhak mendapatkan deklarasi dibawah SPA bertarikh 7.9.2010 adalah terbatal ab initio dan/atau tidak sah dan/atau tidak boleh dikuatkuasakan akibat kononnya bekas pengarah-pengarah defendan (iaitu pihak-pihak ketiga pertama dan ketiga) tidak mempunyai D kuasa untuk menandatangani SPA bersebut kononnya mereka telah disingkirkan sebagai pengarah-pengarah defendant di kononnya Mesyuarat Agung Luar Biasa (EGM) pada 30.7.2010.

(2) Sama ada terdapat kontrak yang mengikat di antara plaintif dan defendan bagi penjualan hartanah tersebut sebelum kononnya penyingkiran pihak E ketiga pertama, kedua dan ketiga sebagai pengarah-pengarah defendan

(3) Sama ada defendan boleh secara satu pihak (*unilaterally*) menolak (*repudiated*) SPA tersebut atau ia adalah terbatal ab initio atau sama asa penolakkan itu suatu kemungkiran.

F (4) Sama ada resolusi berbangkit daripada Mesyuarat Agung Luar Biasa pemegang-pemegang saham pada 26.5.2010 masih terpakai dan berkuatkuasa semasa Wong Lok Kong, Siew Chee Weng dan Tetuan Dennis Nik & Wong kononnya mengambil langkah membatalkan SPA tersebut.

G (5) Sama ada otoriti melalui Resolusi Pekeliling Pengarah-Pengarah Defendan bertarikh 14.7.2010 kepada pihak-pihak ketiga pertama dan ketiga untuk menandatangani semua dokumen bagi penjualan hartanah tersebut kepada plaintif tamat dan/atau tidak sah selepas kononya penyingkiran mereka pada 30.7.2010.

H (6) Sama ada penyingkiran pihak ketiga pertama, kedua dan ketiga sebagai pengaraha-pengarah membatalkan SPA tersebut.

(7) Sama ada apa-apa pertikaian urusan dalaman memberi kesan dan/atau membatalkan SPA tersebut.

I (8) Sekiranya didapati SPA adalah sah dan dimungkiri oleh defendan, sama ada plaintif berhak menuntut ganti rugi tertentu yang dipersetujui di bawahnya.

(9) Jika plaintif mendapat penghakiman terhadap defendan, sama ada defendan berhak memmtut sumbangan atau tanggung rugi (*indemnity*) daripada pihak-pihak ketiga.

(10) Sekiranya didapati SPA adalah tidak sah dan terbatal ab initio, adakah defendan berhak menuntut balas terhadap plaintif dan berapa jumlah kerugian yang perlu dibayar oleh plaintif kepada defendan.

[10] The issues to be tried (encl H) with regard to the defendant's claim against the third party is as follows:

(1) Sama ada defendan berhak mendapatkan deklarasi dibawah SPA bertarikh 7.9.2010 adalah terbatal ab initio dan/atau tidak sah dan/atau tidak boleh dikuatkuasakan akibat kononnya bekas pengarah-pengarah defendan (iaitu pihak-pihak ketiga pertama dan ketiga) tidak mempunyai kuasa untuk menandatangani SPA bersebut kononnya mereka telah disingkirkan sebagai pengarah-pengarah defendant di kononnya Mesyuarat Agung Luar Biasa (EGM) pada 30.7.2010.

(2) Sama ada terdapat kontrak yang mengikat di antara plaintif dan defendan bagi penjualan hartanah tersebut sebelum kononnya penyingkiran pihak ketiga pertama, kedua dan ketiga sebagai pengarah-pengarah defendan

(3) Sama ada defendan boleh secara satu pihak (*unilaterally*) menolak (*repudiated*) SPA tersebut atau ia adalah terbatal ab initio atau sama asa penolakkan itu suatu kemungkiran.

(4) Sama ada resolusi berbangkit daripada Mesyuarat Agung Luar Biasa pemegang-pemegang saham pada 26.5.2010 masih terpakai dan berkuatkuasa semasa Wong Lok Kong, Siew Chee Weng dan Tetuan Dennis Nik & Wong kononnya mengambil langkah membatalkan SPA tersebut.

(5) Sama ada otoriti melalui Resolusi Pekeliling Pengarah-Pengarah Defendan bertarikh 14.7.2010 kepada pihak-pihak ketiga pertama dan ketiga untuk menandatangani semua dokumen bagi penjualan hartanah tersebut kepada plaintif tamat dan/atau tidak sah selepas kononya penyingkiran mereka pada 30.7.2010.

(6) Sama ada kononnya penyingkiran pihak ketiga pertama, kedua dan ketiga sebagai pengaraha-pengarah membatalkan SPA tersebut.

(7) Sama ada pertikaian urusan dalaman memberi kesan dan/atau membatalkan SPA tersebut.

(8) Jika plaintif mendapat penghakiman terhadap defendan, sama ada defendan berhak memmtut sumbangan atau tanggung rugi *(indemnity)*daripda pihak-pihak ketiga.

[11] The plaintiff had called two witnesses to testify on its behalf (PW1–PW2):

(a) En Wong Yoon Kim - PW1

A

(b) En Lee Chee Chung - PW2

[12] The defendant had called En Wong Lok Kong ('DW1') as their witness.

B

[13] The third parties had called four witnesses to testify on their behalf (TPW1–TPW4):

C

(a) En Chee Lai Yen - TPW1
(b) En Mohamed Sarip bin Salleh - TPW2
(c) En Babu Naidu a/l Rajappa Naidu - TPW3
(d) En Long Kwok Seng (the first third party) - TPW4

D

[14] Learned counsel for the plaintiff has submitted, inter alia, and briefly as follows:

E

(a) based on the resolution dated 26 May 2012, the board of directors at that point of time had the requisite power and authority to do the necessary to effect the said sale which include the power to appoint a real estate agent, be signatories of the said sale and purchase agreement and also to appoint solicitors to draft and negotiate the terms and conditions of the intended sale and purchase agreement;

F

(b) the defendant did not pass any resolution to cancel the defendant's decision to sell the said property upon removing the Long Kwok Seng, Long Kok Wah and Long Kok Heng, (the third party) as the directors of the defendant company on 30 July 2010;

G

(c) the defendant's argument on the issue of 'subject to contract' must be treated differently by the Malaysian courts as opposed to the UK court. The Malaysian court do not have statute of frauds; wherein despite the existence of the term 'subject to contract', where the oral agreement and agreement through correspondence have been held to exist prior to the finalisation of its other terms;

H

(d) the defendant's former board of directors had the full authority as agents to deal on the 'all other terms and conditions' of the said sale and purchase agreement which was concluded on 20 July 2010;

I

(e) Messrs LY Chee & Associates has the authority as an agent for the defendant. They represented the defendant in the finalisation of the terms of the said sale and purchase agreement based on the resolution passed on 14 July 2010. Messrs LY Chee & Associates had the capacity to

enter into contract on behalf of the defendant as they were specifically authorised to represent as solicitors. Such acts and negotiation binds the defendant (as Messrs LY Chee & Associates' principal) wherein the defendant would be bound by those acts and representation of Messrs LY Chee & Associates;

(f) the removal of the previous directors of the defendant did not affect the concluded deal as the new directors could be named as the signatories of the said sale and purchase agreement;

(g) the defendant's new directors Siew Chee Weng, Wong Lok Kong and Wong Wen Shen had the knowledge that the defendant had sold the property pursuant to the resolution passed on 26 May 2010;

(h) the defendant has failed to discharge the burden of proof to show the actual instructions behind the defendant's appointment of Messrs Dennis Nik & Wong. To invoke s 114(g) of the Evidence Act 1950 (adverse inference) for the failure of the defendant to call or produce evidence from Messrs Dennis Nik & Wong to prove their actual instructions upon knowing that the previous directors had executed the said sale and purchase agreement after their removal as directors;

(i) the defendant is stopped from asserting that the said sale and purchase agreement and the memorandum of transfer was null and void because the defendant had made express representations from the date they knew of the existence of sale. The defendant did not inform the plaintiff of their intention to declare nullity until issuance of their letter dated 1 December 2010;

(j) Clause 8.2.1 of the said sale and purchase agreement permits the plaintiff to accept the defendant's repudiation, demand refund of deposit of RM145,000 and liquidated damages of RM145,000 in the event the defendant wrongfully refuses to proceed with the sale;

(k) liquidated damages of RM145,000 represents the plaintiff's loss as it is an amount agreed between parties and need not be proved;

(l) if the court is of the view that the said sale and purchase agreement is void, the plaintiff is still entitled to be compensated of its losses based on the equitable principle of restitution; and

(m) the plaintiff prays for the claim to be allowed with costs.

[15] In support of the plaintiff's case, learned counsel for the plaintiff has referred to the following authorities:

(a) Contracts Act 1950;

(b) Evidence Act 1950;

(c) Companies Act 1965;

(d) *Law of Contract*, (3rd Ed), by Dato' Seri Visu Sinnadurai, 2003, Lexis Nexis Butterworth;

(e) *Tan Swee Hoe Co Ltd v Ali Hussain Bros* [1980] 2 MLJ 16;

(f) *Ireland v Livingstone* (1872) LR 5 HL 395;

(g) *Rex v Yoon Choon Pawnshop and others* [1939] 1 MLJ 125;

(h) *Hely-Hutchinson v Brayhead Ltd* [1967] 3 All ER 98;

(i) *Byrd v Nunn* (1877) 7 Ch D 284;

(j) *Daiman Development Sdn Bhd v Mathew Lui Chin Teck & anor appeal* [1981] 1 MLJ 56; and

(k) *Tan Chong & Sons Motor Company Sdn Bhd v Alan McKnight* [1983] 1 MLJ 220.

[16] On the other hand, learned counsel for the defendant has submitted, inter alia, and briefly as follows:

(a) there is no binding contract between the plaintiff and the defendant pursuant to the letter of offer dated 14 July 2010 and the letter of acceptance dated 20 July 2010 as the terms were not agreed by the defendant by signing the said letter;

(b) the solicitors representing the plaintiff in the sale and purchase transaction had failed to conduct a CCM search in early September 2009;

(c) PW2 being the solicitor for the plaintiff did not diligently and professionally carry out his duty in concluding the sale with the defendant from 4 October 2010–2 December 2010 knowing that Messrs Nik & Wong are the new solicitors acting for the defendant instead of Messrs LY Chee and Associates and being alerted by Messrs LY Chee's letter dated 22 October 2010;

(d) the defendant's directors' circular resolution dated 14 July 2010 had lapsed and no valid authority was given to the third parties to execute the said sale and purchase agreement. Therefore the said sale and purchase agreement is void ab initio and/or unenforceable due to want of authority;

(e) Messrs Dennis, Nik & Wong had taken reasonable steps to take over conduct from the defendant's previous solicitors, Messrs LY Chee & Associates;

(f) there was no delay by the defendant in informing the plaintiff's solicitors that the said sale and purchase agreement was signed by the persons without valid authority;

(g) the defendant has the right to dispose off the said property to the new purchaser, BH Agricultural Tractors Parts Sdn Bhd after mandate of the members of the defendant had been obtained at the EQM held on 21 October 2011;

(h) the directors resolution dated 14 July 2010 given to the third parties had lapsed and/or invalidated after the removal of the former directors on 30 July 2010;

(i) this court is not the proper forum to challenge the validity of the EGM and removal of the third parties as directors;

(j) based on the defendant's article of association, all the members of the defendant are aware that the form of proxy has to be deposited at the registered office of the company or at such other place specified in the notice of EGM;

(k) The null and void sale and purchase agreement cannot be ratified by merely passing a new resolution to cancel the earlier authority especially when the first and the third parties were removed as directors;

Reply to the plaintiff's submissions

(l) despite having knowledge of the said EGM, the third parties have failed to attend the said EGM and have never challenged the said EGM. Hence the third parties have been rightfully removed as the directors of the defendant;

(m) estoppel principles are not applicable here against the defendant for asserting that the said sale and purchase agreement and the memorandum of transfer is null and void as they only became aware upon receiving the documents from Messrs LY Chee & Associates on 30 November 2010 before issuing the letter dated 2 December 2010 declaring the said sale and purchase agreement as void;

(n) despite being aware of the removal of the previous directors the plaintiff's solicitors chose to ignore this and had accepted Messrs LY Chee & Associates explanation vide letter 22 October 2010 that the change in the directorship structure did not affect the execution the said sale and purchase agreement. There is no responsibility on the new directors of the defendant to re-execute a null and void;

(o) Messrs LY Chee had breached their professional duty by having Long Kwok Seng and Long Kok Heng to execute the said sale and

purchase agreement although they were validly removed as the directors of the defendant contrary to the directors resolution dated 14 July 2010;

(p) the deposit of RM145,000 had been refunded to the plaintiff and the plaintiff cannot rely on cl 8.2 to seek repudiation and treat the transaction as terminated with the residual claim for refund of deposit and liquidated damages. The plaintiff is also not entitled to be compensated for its losses based on the equitable principle of restitution and s 66 of the Contracts Act 1950;

Reply to the third party submissions

(q) Long Kwok Seng and Long Kok Heng (the first and third party) must show that they have complied with the resolution dated 14 July 2010. They did not act within the ambit of the resolution which required them lieing directors of the company' and hence had no authority to sign any agreement including the said sale and purchase agreement and the memorandum of transfer;

(r) there is no requirement for the defendant to show documents of any cancellation of the resolutions dated 26 May 2010 and 14 July 2010 respectively;

(s) there is no delay on the part of the defendant to declare the sale and purchase as null and void;

(t) the plaintiff had failed to prove their case on the balance of probabilities. The defendant prays for the plaintiff's claim to be dismissed with costs to be taxed. In the alternative, if the plaintiff's claim is allowed then the defendant pray for contribution and indemnity against the third parties;

[17] In support of the defendant's argument, learned counsel for the defendant has referred to the following authorities:

(a) *Hubah Sdn Bhd and Ors v Koperasi Pusaka (Penampang) Berhad and Ors* [2011] MLJU 230;

(b) *Thong Foo Ching & Ors v Shinegori* [1988] 4 MLJ 585;

(c) *Malaysia Newsprint Sdn Bhd v Perdana Cigna Insurance Bhd & Ors* [2008] 2 MLJ 256;

(d) *Datuk Yap Pak Leong v Sababumi (Sandakan) Sdn Bhd* [1997] 1 MLJ 587;

(e) ss 20 and 127 of the Companies Act 1965;

(f) *Datuk Johari Abdul Ghani & Ors v QSR Brands Bhd & Ors* [2007] 4 MLJ 19;

(g) *Extreme System Sdn Bhd v Ho Hup Construction Company Bhd & Ors* [2010] MLJU 487;

(h) s 181 of the Companies Act 1965;

(i) *Re Kong Thai Sawmill (Miri) Sdn Bhd & Ors v Ling Beng Sung* [1978] 2 MLJ 227;

(j) *Tan Kian Hua v Colour Image Scan Sdn Bhd & Other* [2004] MLJU 178;

(k) *Chemfert Sdn Bhd & Anor v Lim Hua* [2010] 5 MLJ 228;

(l) s 145 of the Companies Act 1965;

(m) s 355(1) of the Companies Act 1965;

(n) Chan & Koh on *Malaysia Company Law Principles & Practice* (2nd Ed), 2006;

(o) *Ayer Hitam Tin Dredging Malaysia Bhd v YC Chin Enterprises Sdn Bhd* [1994] 2 MLJ 754; and

(p) *Lim Chia Min v Cheah Sang Ngeow & Anor* [1997] 1 MLJ 127.

[18] Learned counsel for the third party has submitted, inter alia, and briefly as follows:

(a) the defendant has failed to show any evidence that the resolutions dated 26 May 2010 were cancelled;

(b) DW1 and Siew Chee Weng were well aware of the resolution passed on 26 May 2010 and the notice of EGM dated 7 May 2010 for the disposal of the property, yet nothing was done to stop the sale of the said property. No injunctive relief was sought from the court, or at the very least, a warning letter not to dispose the said property;

(c) the third parties had acted within the ambit of the resolutions;

(d) the defendant had paid the Messrs LY Chee & Associates legal fees even though they have contested the appointment or the resolution;

(e) the defendant's prayer for the declaration is also akin to by passing or circumventing a required injunctive relief;

Reply to the defendant's submissions

(f) DW1 had filed an action under s 181(1) of the Companies Act 1965 to challenge the resolution passed on 26 May 2010;

(g) the third party invokes s 114(g) of the Evidence Act 1950 to be applied as the defendant had failed to call Siew Chee Weng to enable parties to cross-examine the alleged unfairness;

(h) the memorandum and articles of association does not state only directors can sign and execute documents for the sale of the property. Based on the resolution dated 14 July 2010, Long Kwok Seng and Long Kok Heng were authorised to execute all the documents pertaining to the disposal of the said property;

(i) in this case, the defendant owned the said property and the third party were agents of the defendant;

(j) the defendant had every opportunity to ratify the authority of the first and third parties, and carried on the sale with the plaintiff, by passing the resolution to cancel the earlier authority of the original directors, with the alleged new directors;

(k) there was a binding contract between the plaintiff and the defendant and it cannot be construed to be subject to any conditions;

(l) the resolutions for the sale and the appointment of Messrs LY Chee & Associates are binding unless it is cancelled;

(m) the defendant had failed to produce any resolution in respect of the appointment of the new solicitors, Messrs Dennis, Nik & Wong, the sale to BH Agriculture Tractor Parts Sdn Bhd (the new purchasers) and sanction by the shareholders for the sale, which demonstrates the mala fide conduct of the defendant, which is no longer under the control of the third parties;

(n) there was also mala fide conduct by the defendant when the address of in the proxy form was not the registered address; and

(o) the third party prays is if any claim is allowed against the defendant, the claim for indemnity by the defendant be dismissed with costs.

[19] In support of the third party's argument, learned counsel for the third party has referred to the following authorities:

(a) *Chan Thiam Teng v Ban Swee Heng Sdn Bhd* [1992] 2 MLJ 583;

(b) *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin & Ors* [1998] 1 SLR 374

(c) *Kelapa Sawit (Teluk Anson) Sdn Bhd v Dr Yeoh Kim Leng & Ors* [1991] 1 MLJ 301; [1991] 1 CLJ (Rep) 194;

(d) *Teo Kim Kuat v Aetna Universal Insurance Bhd (No2)* [2002] 2 MLJ 333; [2002] 2 CLJ 147;

(e) *Sakapp Commodities (M) Sdn Bhd v Cecil Abraham (Executor of the estate of Loo Cheng Ghoe* [1998] 4 MLJ 651; [1998] 4 CLJ 812;

(f) ss 181(1), 127, 20 of the Companies Act 1965;

(g) s 114(g) of the Evidence Act;

(h) *Ferguson v Wilson* (1866) LR 2 Ch App 77;

(i) *Kaye v Croydon Tramways Company* [1898] 1 Ch 358;

(j) *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331; [1995] 4 CLJ 283;

(k) *Teh Eok Kee & Anor v Tan Chiah Hock & Anor* [1995] 3 MLJ 613; [1996] 2 CLJ 227;

(l) *Parker & Cooper, Limited v Reading* [1926] 1 Ch 975;

(m) *Grant v United Kingdom Swithback Railways Co* (1888) 40 Ch D 135;

(n) *Law of Contract*, (3rd Ed), by Dato Seri Visu Sinnadurai, 2003, Lexis Nexis Butterworth;

(o) *Selva Kumar a/l Murugiah v Thiagarajah a/l Retnasamy* [1995] 1 MLJ 817; [1995] 2 CLJ 374; and

(p) *Johor Coastal Development Sdn Bhd v Constrajaya Sdn Bhd* [2009] 4 MLJ 443; [2009] 4 CLJ 569.

DECISION

[20] Having heard and seen the witnesses giving evidence and having considered the totality of the evidence with the admitted documents presented by the parties and upon considering the submissions with the authorities and the research carried out by this court, the decision of this court is.

[21] Upon the totality of the evidence, in particular, the resolution passed on 30 July 2010 supposedly having removed the said two directors, who had executed the said sale and purchase agreement dated 7 September 2010, this court finds that it did not expressly or by necessary implications, provided or mandated for the cancellation, repudiation or non recognition of the said sale and purchase agreement dated 7 September 2010 or had extinguished the resolution dated 14 July 2010 to sell the said property to the plaintiff which had existed prior to the removal of the said two directors namely, the first and third party, ie the signatories to the said sale and purchase agreement. The said sale and purchase agreement and the sale of the said property continued to be in force and is valid until such time there is a proper and valid resolution passed by the defendant-company to cancel the said sale and purchase agreement or to treat the said sale and purchase agreement as non-existence or is not recognised or to revoke the resolution passed on 1 July 2010. Accordingly, on the factual matrix of the present case, this court finds that upon the undisputed evidence

and based on the contemporaneous documents, the plaintiff had discharged their burden and even if the two directors (the first and third party) were removed as directors at the time of the execution the said sale and purchase agreement, it is still binding upon the defendants.

[22] In fact, the appointment of the first and third party by the resolution passed on 14 July 2010 to execute the said sale and purchase agreement passed by the resolution on 11 July 2010 had not been expressly revoked, terminated or cancelled by any resolution, neither has the resolution for the purported removal of the first and third party as the directors of the defendant company dealt or resolved as to the validity of the said sale and purchase agreement. The most appropriate time if the defendant had genuinely intended not to recognise the said sale and purchase agreement which was entered between the plaintiff and the defendant (executed by the first and third party) was at the time when both the first and third party were removed as directors. Unfortunately, for the reasons best known to the defendant-company, it was not the case and there is nothing in that resolution that the defendant had passed a resolution not to proceed with the sale and purchase agreement. The defendants cannot, therefore, unilaterally invalidate the said sale and purchase agreement which contains all the terms and conditions required in law for the formation of a legally binding contract which has effectively been complied and remains valid in accordance with the resolution passed on 14 July 2010 to sell the said property to the plaintiff and is not vitiated for the reason as relied on by the defendant. In other words, on the factual matrix of the present case, this court is of the considered view that the present Board of Directors of the defendant cannot take the position that by a mere purported removal of the first and third party as directors of the defendant company and without more and without any resolution passed to revoke or cancel the resolution passed on 14 July 2010 or to hold the said sale and purchase agreement void ab initio and not binding as the resolution passed on 14 July 2010 to sell the said property to the plaintiff upon the terms as contained in the said sale and purchase agreement and the resolution passed on 14 July 2010 still remain unresolved or cancelled or removed.

[23] Having regard to the correspondence between the plaintiff's solicitors Messrs Faidz Leong & Chong and the defendant's solicitors, Messrs LY Chee & Associates as produced and admitted as evidence and having regard to the conduct and the position taken by the defendant and the fact that the said sale and purchase agreement had been entered into writing pursuant to the resolution passed on 14 July 2010, it seems to this court to be rather startling and not consistent with the defendant's stand that the said agreement was not been finalised and is still subject to a contract being entered into between the plaintiff and the defendant. Therefore, the issue of 'subject to the contract' to be entered into as raised on the defendant's behalf is not a bona fide defense or

relevant factor for consideration as there is already a contract in writing and it is in existence without being revoked or cancelled by any resolution passed by the defendant. The new solicitors from Messrs Dennis Nik and Wong by their letter dated 4 October 2010 addressed to the plaintiff's solicitors, Messrs Faidz Leong & Chong did not refer or mention that the said sale and purchase agreement is not recognised or has been revoked by the defendant company on the ground that and in view of the defendant's stand that the first and third third party had been removed as the directors before the execution of the said sale and purchase agreement nor is there any material to support that the defendant have by a resolution revoked the previous resolution passed on 14 July 2010 to sell the said property to the plaintiff.

[24] It is important to stress that the removal of the first and third third party as directors of the defendant-company should not be considered in isolation but must be considered on the totality of the evidence and the background facts in order to arrive at a just decision. Further, as stated above there is distinct evidence to show there is in fact no resolution passed or produced to show that the resolution to sell the said property at the price of RM1,145,000 to the plaintiff which has been passed on 14 July 2010 had been revoked or cancelled by any subsequent resolution. In other words, the defendant cannot be allowed to escape liability by asserting that since the first and third third party had been removed as directors at the time when the said sale and purchase agreement was executed, the said sale and purchase agreement pursuant to the resolution on 14 July 2010 is void ab initio. Without having not produced any resolution to the effect that the purchasers right to purchase the said property pursuant to the resolution passed on 14 July 2010 has been revoked by a subsequent resolution. In actual fact there is no such resolution and therefore the said sale to the plaintiff pursuant to the resolution passed by the defendants on 14 July 2010 still exist in law. Merely having removed the first and third third party as directors of the defendant by resolution on 30 July 2010 due to internal squabbles without cancelling the previous resolution on 14 July 2010, did not automatically without more, result in the said sale and purchase agreement to be void ab initio unless there were resolutions passed by the board of directors that the said sale and purchase agreement passed by the resolution on 14 July 2010 has been revoked or cancelled and due notice had been immediately given to the plaintiff of such a resolution if in fact there was such a resolution passed to revoke to said resolution on 14 July 2010 which none exist.

[25] On the other hand, and even supposing that the said sale and purchase agreement had not been validly executed by the defendant company in view of the purported removal of the first and third third party at the time of the execution of the said sale and purchase agreement, the same could no doubt be ratified. However, the defendant had failed or avoided the issue that the sale of the said property to the plaintiff had still existed at the time when the sale and

purchase agreement was executed on 7 September 2010 in view of the resolution passed on 14 July 2010 and the same has not been revoked.

[26] There is also no resolution produced to show that the resolution passed on 14 July 2010 by the defendant to appoint of Messrs LY Chee & Associate as the solicitors to act for the defendant in the said transaction on the said sale and purchase agreement had been revoked. In the circumstances, the plaintiff is entitled to accept and rely on the correspondences between the plaintiff's solicitors Messrs Faidz Leong & Chong and the defendant's solicitors, Messrs LY Chee & Assiociates in respect of the said sale and purchase agreement dated 7 September 2010 which supports the view that by inferences, the defendant had ratified the said sale and purchase agreement even if the execution of the said sale and purchase agreement by the first and third party was done after they were purportedly removed as directors. On the factual matrix in the present case, there is sufficient evidence for which an inference of ratification by acquiescence could be drawn as the defendant had not taken adequate steps to inform the plaintiff of the non-recognition of the said sale and purchase agreement within a reasonable time or at the earliest period possible or available or a resolution having been passed to cancel the said sale and purchase agreement or the sale to the plaintiff, (see *Teh Eok Kee & Anor v Tan Chiah Hock & Anor* [1996] 3 MLJ 316; [1996] 2 CLJ 227).

[27] The cases and authorities referred to by the defendant are for principles of law and not for conclusion of facts as found in present case.

The decision in *KL Engineering Sdn Bhd & Anor v Arab Malaysian Finance Bhd* [1994] 2 MLJ 201 can be distinguished when taking into consideration and compared to the factual matrix and background of the present case. In that case, the respondent (a licensed finance company), had sued the first appellant as hirer of an equipment under a hire purchase agreement purported to have been signed by the second appellant and one Kaw Yuen Wah on 13 September 1986. Both the second appellant and Kaw Yuen Wah had also on the said date executed a letter of guarantee.

The first appellant had defaulted the payment of the monthly installments and had failed and or neglected to return the equipment to the finance company upon termination of the hire purchase agreement.

The respondent commenced an action against them for judgment of the sum of RM31,007.48 and for the return of the equipment. The main defense of the three defendants including the first appellant was the lack of authority on the part of the second defendant and Kaw Yuen Wah to execute the Hire Purchase agreement on behalf of the first appellant company. There was also evidence that Kaw Yuen Wah was the director of the company until 1986 and the copy of Form 49 was produced and that in 1986 Kaw Yuen Wah was not the director of the first appellant company.

On the other hand, the second appellant had admitted he was the Director of the appellant at the material time but had denied the signatures on the hire purchase agreement and the letter of guarantee and that he had not purchased any machinery on the first appellant's behalf from the respondent.

There was also denial in the statement of defense of the first and third defendants of having executed the hire purchase agreement and that the common seal used in the agreement is a forgery. However, the trial court did not make any finding whether Kaw Yuen Wah had acted with or without authority of the first appellant company. There was also concession made by the counsel for the first respondent that there was insufficient evidence against the first appellant but that was not considered by the trial court.

Kaw Yuen Wah had retired as director as early as 19 July 1982 whereas the hire purchase agreement was executed on 19 September 1986, four years after the retirement of Kaw Yuen Wah.

Whereas in the present case, the issue of the resolution having been passed on 14 July 2010 to sell the said property to the plaintiff was not revoked and it was not one of the factors in that case.

Accordingly, and with respect, the facts in *KL Engineering Sdn Bhd & Anor v Arab Malaysian Finance Bhd* can be distinguished and does not assist the defendant to overcome its liability or to answer the issues in favour of the defendant.

[28] In the present case, this court finds that the plaintiff was a bona fide purchaser for value without notice or constructive of the internal squabbles among the directors and it did not affect the resolution passed on 14 July 2010 to sell the said property to the said plaintiff and which had authorised the first and third party to execute the sale and purchase agreement which resolution remains intact and not revoked but for the purported removal of first and third third party as directors of the defendant-company. In any event, the doctrine of constructive notice and the change of the directors of the defendant did not impose a duty on the plaintiff to conduct an investigation as to the capacity or power of the first and third third party to execute the said sale and purchase agreement pursuant to the resolution passed on 14 July 2010 to sell the property to the plaintiff as the doctrine of constructive notice must be confined to what is disclosed on the company's document, particularly Form 49 and the memorandum of association (see *Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors* [1998] 1 MLJ 465).

[29] On the factual matrix of the present case, inter alia, the letters exchanged between the solicitors, the plaintiff is entitled to enforce the said sale and purchase agreement as the court finds upon considering the contemporaneous correspondence that they had acted in good faith and without notice that the authority given to the first and third party to execute the said sale and purchase agreement had been abused by the first and third party (see *Goh Hooi Yin v Lim Teong Ghee & Ors* [1990] 3 MLJ 23 referred to in *Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors* [1998] 1 MLJ 465).

The letter dated 20 July 2010 from the defendants' solicitor to the plaintiff's solicitor is reproduced and is as follows:

LY CHEE & ASSOCIATES
Advocates & Solicitors
Peguambela dan Peguamcara Sally L.Y. Chee

Your Ref: pls advise
Our Ref: SC/C/SAISB/509/10/SPA
20 July 2010

Faidz Leong & Chong
Advocates & Solicitors
No. 2-20B First Floor
Jalan Desa 1/3
Desa Aman Puri
52100Kuala Lumpur By fax (6277 2193)/post

Dear sirs,

Re : Sale and Purchase Agreement
Property : No. 771, 4 ½ Miles Jalan Ipoh, 51200 Kuala Lumpur held under Geran 8456 Lot 34802 Mukim Batu Daerah Kuala Lumpur
Vendor : Saga Autopart Industries Sdn Bhd
Purchaser: Chong Wai Automobile Enterprise (M) Sdn Bhd

We refer to the above wherein we act for the Vendor and tele-conversation (your Mr. Leong/ our Ms Chee) yesterday.

We are instructed that our clients are agreeable to sell the property subject to the followings:-

1. The earnest deposit of RM29,000.00 only shall be deposited with us as stakeholders pending execution of the Sale and Purchase Agreement;
2. The purchase price is RM1,450,000.00
3. Deposit sum of RM145,000.00 shall be paid upon execution of Sale and Purchase Agreement

4. Balance price of RM1,305,000.00 to be payable within 3 months from date of the sale and purchase agreement with one extension subject to late interest 8% p.a. on the outstanding balance;
5. All other terms and conditions to be mutually agreed and provided in the sale and purchase agreement.
6. In the event there are no consensus on the terms and conditions of the sale and purchase agreement within 14 days from the date thereof and this transaction is aborted, the earnest deposit of RM29,000.00 shall be refunded without any interest and neither party shall have any claim against each other.

If our clients are agreeable, kindly let us have earnest deposit and draft agreement as soon as possible.

Yours faithfully,

s.g.d

c.c. clients- attn KS Long

[30] The conduct of the defendant as stated above has established on their part an election or intention to affirm the said sale and purchase agreement, The defendant, cannot therefore be permitted to unilaterally resile from the previous resolution passed on 14 July 2010 to sell the said property to the plaintiff and the appointment of Messrs LY Chee & Associates as their solicitors as an afterthought and due to the internal squabbles among the directors as the first and third party were authorised to execute the said sale and purchase agreement. Consequently, the defendant cannot be permitted to say that the said sale and purchase agreement which contains the seal of the defendant company as invalid or void for lack of authority. If there was any miscommunication or inadvertent omission on the part of the new board of directors to inform Messrs Dennis Nik and Wong of the defendant's intention or views to treat the said sale and purchase agreement as void ab initio which is not reflected in the letter dated 4 October 2010 written to Messrs Faidz Leong & Chong by the new solicitors Messrs Dennis Nik and Wong, it is a matter between the defendant and the said solicitors. In fact, there was nothing stated in the said letter dated 4 October 2010 from the defendant's new solicitors to inform to Messrs LY Chee & Associate concerning the said agreement which is being contested apart from stating of the instruction to take over conduct from Messrs LY Chee & Associate.

In other words, it cannot be disputed that the letter dated 4 October 2010 from Messrs Dennis Nik and Wong (the new solicitors for the defendant) to Messrs LY Chee & Associates recognises the fact that Messrs LY Chee & Associate were the duly authorised solicitors for the defendant company and whatever transaction, admission or conduct carried out by Messrs LY Chee & Associate

A is recognised and binding upon the defendant company and there was no contest at the material time. If there was any unauthorised act by Messrs LY Chee & Associate in reference in the said sale and purchase agreement, the defendant ought to have applied to include Messrs LY Chee & Associate as third party or as a co-defendant but this was not done. This is a case of the B defendant seeking to avoid a legitimate liability owed to the plaintiff. This court cannot and will nor condone the afterthought defence of the defendant and this court is in agreement with the plaintiff that the defendant cannot be permitted to approbate and reprobate. This court finds that the plaintiff is a bona fide purchaser for value and without any notice of the internal squabbles C of the defendant.

[31] The issue that Lim Seng Liang as the proxy of Siew Lee Weng was not able to take part or vote during the meeting on 14 July 2010 are matters beyond the knowledge and control expected of the plaintiff who was a bona fide for D value the purchase and an outsider and the plaintiff must surely be protected under the 'indoor management rule' or known as *Turquand's rule* and which was followed in *Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors*.

E **[32]** In the circumstances and upon considering the factual matrix and background facts of the present case, this court is satisfied that it is not just and equitable to find for the defendant that the said sale and purchase agreement is void ab initio as contended on the defendant's behalf but it is rather a case of voidable contract which cannot be decided in favour the defendant for the F reasons stated as above. Accordingly, this court is satisfied that the plaintiff has established the claim on the balance of probabilities and the decision ought to be given in favour of the plaintiff.

The following are the relevant resolutions, correspondences and to be considered:

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SAGA AUTOPARTS INDUSTRIES SDN BHD
Company No: 278592-H
(Incorporated in Malaysia)

EXTRACT OF THE MINUTES OF THE EXTRAORDINARY GENERAL MEETING held at The CUBES Offices, 14th Floor, GTower, 199 lalan Tun Razak, 50400 Kuala Lumpur on Wednesday, 26th May 2010 AT 11.00 am

"Ordinary Resolution: PROPOSED DISPOSAL BY SAGA AUTO PARTS INDUSTRIES OF A FOUR AND HALF STOREY INTERMEDIATE TERRACE SHOPOFFICE HELD UNDER LOT NO. 34802, GRN 8456 MUKIM BATU, DISTRICT OF KUALA LUMPUR, STATE OF WILAYAH PERSEKUTUAN (KL) MEASURING APPROXIMATELY 149.012 SQUARE METRES.

THAT, subject to the approval of the members of the Company, the Company be and is hereby authorized to dispose the said property at a value of RMl,150,000.00 (Ringgit Malaysia: One Million One Hundred and Fifty Thousand only) or not less than RM920,OOO (Ringgit Malaysia: Nine Hundred Twenty Thousand Only)

AND THAT the Board of Directors of the Company, be and is hereby authorised to take such steps, execute such documents and enter into any arrangements and *I* or undertakings with any party or parties aas it may deem fit, necessary, expedient and / or appropriate in order to implement, finalise and / or give effect to the proposed property disposal with full powers to assent to any terms, conditions, modifications, variations and *I* or amendments or as a consequence of any such requirement or as may be deemed necessary and / or expedient in the best interests of the Company.

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The Chairman tabled the motion before the meeting for approval. After some discussion by the members present, the Chairman called for a vote by show of hands to pass the Ordinary Resolution. On a unanimous votes of the members present and voting in favour of the resolution, the Chairman declared the motion as carried. It was noted that Mr. Wong abstained from voting in respect of the resolution

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CERTIFIED TRUE COPY

s.g.d	s.g.d
Long Kwok Seng	Babu Naidu a/l Rajappa Naidu BC/B/248

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SAGA AUTOPARTS INDUSTRIES SDN BHD
Company No: 278592-H
(Incorporated in Malaysia)

DIRECTORS SECULAR RESOLUTION

Pursuant to the authority conferred in Article 90 of the Company's Article of Association, we, the undersigned, being the directors of SAGA AUTOPARTS INDUSTRIES SDN BHD at this date, do hereby RESOLVE:

DISPOSAL OF THE COMPANY'S FOUR AND HALF STOREY INTERMEDIATE TERRACE SHOPOFFICE HELD UNDER LOT NO. 34802, GRN 8456 MUKIM BATU, DISTRICT OF KUALA LUMPUR, STATE OF WILAYAH PERSEKUTUAN (KL) TO CHONG WAI AUTOMOBILE ENTERPRISE (M) SDN BHD FOR A CASH CONSIDERATION OF RM1,450,000.
- Authority to negotiate, sign and execute documents

Pursuant to the approval of the members of the Company for the disposal of the property disclosed above on 26 May 2010, authority be and is hereby given to **LONG KWOK SENG (NRIC: 580304-10-5455) AND LONG KOK HENG (NRIC: 650217-10-6813)**, being directors of the Company, to take such steps, execute such documents and enter into any arrangements and / or undertakings with any party or parties as it may deem fit, necessary, expedient and / or appropriate in order to implement, finalise and / or give effect to the proposed property disposal with full powers to assent to any terms, conditions, modifications, variations and / or amendments or as a consequence of any such requirements or as may be deemed necessary and / or expedient in the interests of the Company,

AND THAT approval is hereby given for the Common Seal, if so required, to be affixed onto any documents in accordance with the Articles of Association of the Company.

Dated: 14.7.2010

BOARDS OF DIRECTORS

s.g.d
LONG KWOK SENG

s.g.d
LONG KOK WAH

s.g.d
LONG KOK HENG

SAGA AUTOPARTS INDUSTRIES SDN BHD
Company No: 278592-H
(Incorporated in Malaysia)

Pursuant to the authority conferred in Article 90 of the Company's Article of Association, we, the undersigned, being the directors of SAGA AUTOPARTS INDUSTRIES SDN BHD at this date, do hereby RESOLVE:

I) DISPOSAL OF THE COMPANY'S FOUR AND HALF STOREY INTERMEDIATE TERRACE SHOPOFFICE HELD UNDER LOT NO. 34802, GRN 8456 MUKIM BATU, DISTRICT OF KUALA LUMPUR, STATE OF WILAYAH PERSEKUTUAN (KL) TO CHONG WAI AUTOMOBILE ENTERPRISE (M) SDN BHD FOR A CASH CONSIDERATION OF RM1,450,000.

THAT the directors having obtained the approval of the members of the Company for the disposal of the property disclosed above on 26 May 2010, are hereby authorized to dispose the property to Chong Wai Automobile Enterprise (M) Sdn Bhd for a cash consideration ofRM1,450,000.OO (Ringgit Malaysia: One Million Four Hundred and Fifty Thousand Only) upon terms and conditions to be agreed upon,

AND THAT Directors' of the Company, is hereby authorized to take such steps, execute such documents and enter into any arrangements and / or undertakings with any party or parties as it may deem fit, necessary, expedient and / or appropriate in order to implement, finalise and / or give effect to the proposed property disposal with full powers to assent to any terms, conditions, modifications, variations and / or amendments or as a consequence of any such requirements or as may be deemed necessary and / or expedient in the interests of the Company,

II) APPOINTMENT OF LEGAL FIRM

AND THAT the directors do and hereby appoint Messrs LY Chee & Associates as the solicitors to act for the company on the said property disposal

Dated: 14.7.2010

BOARDS OF DIRECTORS

s.g.d
LONG KWOK SENG

s.g.d
LONG KOK WAH

s.g.d
LONG KOK HENG

DENNIS NIK & WONG
ADVOCATES & SOLICITORS PEGUAMBELA & PEGUAMCARA

Ruj Tuan/ Your Ref : SC/C/SA/SB/509/10/SPA
Ruj Kami/ Our Ref : L09MAIN(WLK)(RY)
Date/Tarikh : 4th October 2010

Messrs LY Chee & Associates
Advocates & Solicitors
No. 5-3B, Jalan PJU 1/3F
Sunway Mas Commercial Centre
47301 Petaling Jaya
Selangor

Dear Sirs,

Re : Sale and Purchase Agreement dated 7th September 2010

Property:	A unit of four and a half storey intermediate terrace shop office held under GRN No. 8456, Lot No. 34802, Mukim Batu, Daerah Kuala Lumpur, Wilayah Persekutuan Kuala Lumpur bearing a postal address No. 771, 4 ½ Mile, Jalan Ipoh, 51200 Kuala Lumpur
Purchaser:	Chong Wai Automobile Enterprise (M) Sdn Bhd
Vendor :	Saga Autopart Industries Sdn Bhd

We refer to the above matter.

We understand that you act for the Vendor in the above matter.

We have been approached by the Vendor, Saga Autoparts Industries Sdn Bhd to take over conduct of the above matter from your goodselves.

In this connection, please let us know if you have any objection. If you do not have any objection,

(i) please forward to us the relevant agreements, correspondence and the documents; and
(ii) please let us know the status of the above matter.

Thank you.

Yours faithfully,

s.g.d

DENNIS NIK & WONG
RY/VT
c.c Saga Autoparts Industries Sdn Bhd

[33] As to the issues to be tried between the plaintiff and the defendant, it is answered as follows:

Issue No 1	Negative
Issue No 2	Affirmative

Issue No 3	There are two parts to the issues. As for the first part, it is negative. As for the second part, it is affirmative in that, the defendant cannot repudiate or treat the said sale and purchase agreement as void ab initio.
Issue No 4	Affirmative in so far as the resolution on 26 May 2010. There is no resolution of the defendant to cancel the said sale and purchase agreement.
Issue No 5	Negative as the resolution which was passed on 14 July 2010 to sell the said property to the plaintiff had still existed.
Issue No 6	Negative
Issue No 7	Negative
Issue No 8	Affirmative but subject to proof. Clause 8 of the said sale and purchase agreement or to claim for the liquidated sum is not applicable.
Issue No 9	Negative.
Issue No 10	Need not be answered in view of the decision to issues 1–9.

[34] Answer to the issues to be tried between the defendant and the third party is as follows: -

Issue No 1	- Negative
Issue No 2	- Affirmative
Issue No 3	- There are two parts to the issues. The first part is negative and the second part is in the affirmative as the defendant cannot treat the sale and purchase agreement as void ab initio.
Issue No 4	- Affirmative
Issue No 5	- Negative as the resolution passed on 1,7.2010 to sell the said property to the plaintiff had still existed.
Issue No 6	- Negative
Issue No 7	- Negative
Issue No 8	- Negative

[35] As for the damages, as claimed by the defendant, in addition to the refund of the deposit sum of RM145,000 which had in fact been refunded and accepted by the plaintiff's solicitors, Messrs Faidz Leong & Chong, this court finds that cl 8 of the said sale and purchase agreement cannot be invoked in favour of the plaintiff. However, perhaps, the plaintiff may be entitled to

damages for which the damages must be proved. As it stands, the losses that the plaintiff has suffered seemed to be the fees paid to the solicitors for the sale and purchase transaction, the payment for stamp duty and charges to Messrs Wang Lai Realty (Kepong) as agency fees. In any event, this court finds that the plaintiff is entitled to damages and the same is subject to proof and to be assessed by the Registrar of the High Court unless it is agreed between the parties and the same is to be recorded before the registrar. In the circumstances and in accordance with the rules of reason and justice, the plaintiff's claim is allowed, prayer (i) in that, the sale and purchase agreement had been terminated as a result of the breach by the defendant. Prayer (iii) is allowed and the defendant is ordered to pay the plaintiff damages for breach of the said sale and purchase agreement. The damages is to be agreed between the parties failing which it is ordered to be assessed by the Registrar of the High Court, Kuala Lumpur. Prayer (iv)–(v) is allowed but at the interest rate of 4%pa on the damages assessed. Prayer (vi) is allowed. Prayer (ii) is disallowed.

[36] Consequently, the defendant's counterclaim as pleaded in prayers (i)–(iv) is dismissed with costs.

[37] In view of the reasons given for the decision in favour of the plaintiff, the defendant's claim against the third party is dismissed with costs.

Plaintiff's claim allowed and defendant's third party claim dismissed with costs.

Reported by Afiq Mohamad Noor